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U.S. Citizenship and Immigration Services

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[redacted]

FILE [redacted] Office: LOS ANGELES, CA Date: JUN 7 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the unmarried son of a United States citizen and the parent of two United States citizen children. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his father and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 19, 2003.

On appeal, counsel asserts that the district director failed to take into account the fact that the applicant has two United States citizen children and mistakenly indicated that his 1994 conviction was the result of a felony when the applicant was actually convicted of a misdemeanor. *Form I-290B*, dated December 12, 2003.

In support of these assertions, counsel submits a brief dated December 12, 2003; copies of documents relating to the criminal history of the applicant; copies of the birth certificates of the applicant's children; a declaration of the mother of one of the applicant's children, undated; a letter verifying the employment of the applicant; copies of tax documents for the applicant and evidence of homeownership by the applicant. The record also contains a sworn declaration of the applicant's father, dated March 15, 1997 and a letter of extreme hardship from the applicant, dated March 15, 1997. The entire record was considered in rendering a decision on the appeal.

The record reflects that on February 14, 1992, the applicant was convicted of Receiving Stolen Property and was sentenced to 12 months probation. On March 15, 1994, the applicant was convicted of Assault with a Deadly Weapon and sentenced to 180 days in county jail with three years probation.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (ii) Exception – Clause (i)(I) shall not apply to an alien who committed only one crime if –
>
> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States ...

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . . .
>
> (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Counsel asserts that the applicant was convicted of a misdemeanor in 1994 and that the decision of the district director erroneously refers to the conviction as relating to a felony. The AAO notes that the applicant was convicted of a misdemeanor as asserted by counsel, but finds that this distinction has no bearing on whether or not the underlying crime is considered a crime involving moral turpitude for immigration purposes. Further, counsel does not establish the significance of the distinction between a misdemeanor and a felony to the instant application.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's father would suffer extreme hardship if the applicant returned to Mexico. The applicant's father states that he depends on the applicant for emotional and financial support. *Sworn Declaration of David Salas*, dated March 15, 1997. The AAO notes that the applicant's father underwent eye surgery at the time that his statement was written. The statement of the applicant's father indicates that the applicant assisted in paying for the operation as well as in his father's recovery. *Id.* Based on the record, the referenced surgery appears to be an isolated event that occurred several years ago and the other medical conditions suffered by the applicant's father, namely diabetes and hypertension, do not require constant attention or financial support. The record does not establish that the applicant is the only person able

to provide transportation and care to the applicant's father. Further, the record does not establish that the applicant cannot continue to provide financial support to his father from a location outside of the United States. The AAO notes that while the applicant's father, as a citizen of the United States, is not required to depart from the United States, doing so would enable him to remain with the applicant and the record makes no assertions of hardship imposed on the applicant's father as a result of relocation to Mexico.

Counsel submits a statement from the mother of the applicant's child to support the assertion that the applicant provides financial support to their child. *Declaration of Juanita Velazco*, undated. Ms. [redacted] further indicates that the applicant provides support to her other child, whose father's whereabouts are unknown. *Id.* The record fails to establish whether or not the applicant provides support to another United States citizen child for whom he is identified as the father. The record also fails to establish that Ms. [redacted] is unable to financially provide for the applicant's child in the absence of the applicant or that the applicant will be unable to continue providing for his child(ren) from a location outside of the United States.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's father and children may endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father and children caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.